

EXCERPTS FROM THE DEPOSITION OF
ELON MUSK
TAKEN NOVEMBER 5, 2021

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 SAN FRANCISCO DIVISION

4 IN RE TESLA, INC. SECURITIES) Case No.
LITIGATION) 3:18-cv-04865-EMC

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12 CONFIDENTIAL

13 ORAL AND VIDEOTAPED DEPOSITION OF

14 ELON MUSK

15 NOVEMBER 5, 2021

16 ORAL AND VIDEOTAPED DEPOSITION OF ELON MUSK,
17 produced as a witness at the instance of the Plaintiff,
18 and duly sworn, was taken in the above-styled and
19 numbered cause on November 5, 2021, from 10:32 a.m. to
20 8:04 p.m., before Candice Andino, Certified Shorthand
21 Reporter in and for the State of Texas, reported by
22 machine shorthand, at Armbrust & Brown, PLLC, 100
23 Congress Avenue, Suite 1300, Austin, Texas, pursuant to
24 Notice and in accordance with the Federal Rules of Civil
25 Procedure.

JOB NO. 202221

A P P E A R A N C E S

FOR THE PLAINTIFFS:

LEVI & KORSINSKY
BY: MR. NICHOLAS PORRITT
MS. ELIZABETH TRIPODI
MS. KATHY AMES VALDIVIESO
1101 30th Street N.W.
Washington, DC 20007

FOR THE DEFENDANTS:

COOLEY
BY: MR. STEPHEN NEAL
3175 Hanover Street
Palo Alto, California 94304

ALSO PRESENT:

CASEY MUMMERT, Videographer
CANDACE JACKMAN, Tesla in-house counsel
JOSHUA WALDEN (appearing telephonically)

1 FRIDAY, NOVEMBER 5, 2021, 10:32 A.M.

2 AUSTIN, TEXAS

3 THE VIDEOGRAPHER: Good morning. This is
4 the start of media labeled Number 1 of the video
5 recorded deposition of Mr. Elon Musk, in the matter in
6 re Tesla, Inc. Securities Litigation, in the US District
7 Court Northern District of California, San Francisco
8 Division, No. 3:18-cv-04865-EMC.

9 This deposition is being held at the law
10 offices of Armbrust & Brown on November 5th, 2021, at
11 approximately 10:32 a.m.

12 My name is Casey Mummert. I'm the legal
13 video specialist from TSG Reporting, Inc. headquartered
14 in 228 East 45th Street, Suite 810, New York, New York
15 10017.

16 The court reporter is Candice Andino in
17 association with TSG Reporting.

18 Counsel, please introduce yourselves.

19 MR. PORRITT: Excuse me. Nicholas Porritt
20 of the firm of Levi & Korsinsky on behalf of the
21 Plaintiff and the Class.

22 MS. AMES VALDIVIESO: Kathy Ames on behalf
23 of Plaintiff.

24 MS. TRIPODI: And Elizabeth Tripodi with
25 Levi & Korsinsky on behalf of Plaintiff.

1 MR. NEAL: And I'm Stephen Neal of Cooley
2 representing Mr. Musk and the other defendants in this
3 case.

4 MS. JACKMAN: Candace Jackman, in-house
5 counsel with Tesla.

6 (Witness sworn.)

7 THE WITNESS: I do.

8 ELON MUSK,
9 having been first duly sworn, was examined and testified
10 as follows:

11 EXAMINATION

12 BY MR. PORRITT:

13 Q. Good morning, Mr. Musk.

14 A. Good morning.

15 Q. As you just heard, my name is Nicholas Porritt.
16 I'm one of the counsel for the plaintiffs in this
17 matter.

18 A. Okay.

19 Q. I'll be taking your deposition today. I know
20 you've been deposed before, but I'll just quickly go
21 over a couple of ground rules just to -- just to make
22 sure we're all on the same page. Excuse me.

23 One is we are creating a written record.
24 You can see Candice here is writing down what I say and
25 will write down what you say. So, with that in mind,

1 what was that? Yeah, we're off the record. Yeah, let's
2 go off the record.

3 THE VIDEOGRAPHER: The time is 12:48. We
4 are off the record.

5 (A lunch recess was taken from 12:48 p.m.
6 to 1:40 p.m.)

7 THE VIDEOGRAPHER: The time is 1:40. We
8 are on the record.

9 Q. (BY MR. PORRITT) Welcome back, Mr. Musk.

10 A. Yeah.

11 Q. On July 31st, 2018, you met with
12 representatives of the Saudi Arabia PIF at the Tesla
13 Fremont Factory?

14 A. Sorry. Is this related to an exhibit or
15 just --

16 Q. No, no. I'm just starting.

17 A. Can you say that again.

18 Q. Yes.

19 On July 31st, 2018, you met with
20 representatives of the Saudi Arabia PIF at the Tesla
21 Fremont Factory?

22 A. Yes.

23 Q. Okay. Meeting was in the evening?

24 A. Yes.

25 Q. Okay. Did you do anything to prepare for that

1 A. I don't recall the exact number of
2 representatives, but there was Yasir, and there were at
3 least a few others.

4 Q. Okay. And it was you and Sam Teller at the
5 beginning and then Deepak Ahuja joined midway through?

6 A. Yes.

7 Q. Okay. And the meeting lasted approximately
8 30 minutes; is that correct?

9 A. I'm not sure of the exact time, but -- but it
10 may have been longer than 30 minutes, but 30 minutes to
11 an hour.

12 Q. Okay. So less than an hour, maybe more than
13 30 minutes?

14 A. Something like that.

15 Q. Okay. In the meeting, you -- you talked about
16 current Tesla performance?

17 A. At the meeting, we talked about primarily
18 the -- the idea of taking Tesla private. That was the
19 primary subject of discussion continuing on prior
20 discussions to that effect. They informed me that they
21 had followed through with taking a 5 percent stake in
22 Tesla, and I was, like, Well, this is great.

23 So based on a verbal discussion and a
24 verbal agreement and no discussion of price, they
25 went -- they moved forward and took a 5 percent stake in

1 A. So this left me with high confidence that there
2 would be more than sufficient funding and more than
3 sufficient majority vote to take Tesla private. And it
4 would be quite reasonable to believe what they say with
5 respect to an investment in Tesla since they had
6 demonstrated with a multibillion-dollar investment in
7 Tesla up to 5 percent, that they would be -- you could
8 count on them for a much larger investment.

9 Q. Is it your testimony here today that you told
10 them that they would -- you would only look for them to
11 acquire up to 20 percent of Tesla?

12 A. No. That's simply my internal calculation.
13 The -- the -- the easy amount for them to acquire would
14 be up to about 20 percent. Things would get -- the deal
15 would be slower if they wanted to go above 20 percent,
16 because it would be subject to a CFIUS review.
17 Basically a -- a -- a foreign ownership investment in a
18 US company would require -- above 20 percent would
19 require government approval, but below 20 percent would
20 not.

21 And so -- so it's like if they were --
22 therefore -- which -- it's not a big leap for them --
23 for them to go from 5 percent to at least 20 percent, if
24 not higher. But 20 percent would be the easiest number
25 to do, but obviously they could go higher. It would

1 A. Yes.

2 Q. Okay. Which I think comes out about to be the
3 same level, once you take out --

4 A. Yeah.

5 Q. So...

6 Was it clear that the PIF were assuming
7 that other investors would not participate in this
8 going-private transaction?

9 A. No. In fact, I was sure that there would be
10 many investors who would support the take-private.

11 Q. I'm going to refer you to 1 -- page 135 of your
12 transcript.

13 A. Yeah.

14 Q. And, particularly, you testified that PIF were
15 not under the assumption that the other investors would
16 participate. That's what you told the SEC there.

17 A. Yeah. The -- the -- the PIF fund was
18 supportive of a take-private however it needed to be
19 done. They were -- they were not attaching strings to
20 the take-private. They were unequivocally supportive of
21 a take-private however it -- however I would like it to
22 be done.

23 Q. But, as you said, no price was discussed,
24 correct, for the potential go-private?

25 A. No price was discussed for the potential

1 take-private, just as -- just as no price was discussed
2 when I said take a 5 percent stake in Tesla, and they
3 did it nonetheless. And there was no contract. There
4 was no written agreement. They did it nonetheless. And
5 they are well aware that taking a company private
6 implies a premium, and that premium would be on the
7 order of 20 percent, if not higher.

8 Q. What was -- how would they know that that
9 was -- that there was a premium for taking private?

10 A. Because they are experienced investors, and
11 every take-private has a premium.

12 Q. Had the Saudi PIF ever done a take-private
13 before?

14 A. I don't know if they've done a take-private or
15 not, but they are experienced investors, and they are
16 well aware that you cannot acquire a company or take a
17 company private without a premium.

18 Q. And that's something they said to you?

19 A. That is not something they said to me, but it
20 is something that every experienced investor is aware
21 of. And they are an experienced investor.

22 Q. And no total amount of funding was discussed at
23 this July 31st meeting; correct?

24 A. No.

25 Q. So it could be anything from 60 to \$80 billion,

1 Isn't that -- isn't that what you testified
2 to?

3 A. There were -- there were -- the -- there were
4 no strings attached to the take-private. Did I think
5 that it would require anything on the order of
6 80 percent? Of course not. I make it very clear in the
7 SEC testimony that I thought 20 or 25 percent would be
8 sufficient.

9 Q. But you didn't discuss 20 to 25 percent with
10 them. You said you didn't discuss percentages with the
11 PIF.

12 MR. NEAL: That's been asked and answered.

13 MR. PORRITT: Yeah.

14 A. Yeah. It was just clear that they were
15 supportive unconditionally of -- of a take-private.

16 Q. (BY MR. PORRITT) Right. Up to any percentage.

17 A. No. You're conflating what -- what would be an
18 aspirational ownership percentage of theirs -- or what I
19 thought might be an aspirational ownership percentage
20 versus what would be their actual ownership percentage.
21 Aspirationally, I'm sure any one of our investors would
22 like to own 100 percent of the company, if not
23 80 percent, but it's not meaningful in -- in the context
24 of this.

25 Q. What was the --

1 A. Yes. And if they, for -- for -- for example,
2 had majority control of Tesla, they could simply mandate
3 it.

4 Q. And to be clear --

5 A. And to be clear, I am not -- I was not opposed
6 to having a factory in Saudi Arabia, but it would have
7 to be when the timing was right, just not, you know,
8 before the timing was right.

9 Q. And to be clear, at the July 31, 2018, meeting,
10 internally, to yourself, you had no intention of letting
11 Saudi Arabia obtain majority control of Tesla; correct?

12 A. Yeah, I did -- I did not think it would be good
13 to have Saudi Arabia have majority control of Tesla.

14 Q. Okay. You -- I think, as we talked about
15 earlier, you mentally had a 20 percent sort of cap for
16 their involvement; correct?

17 A. No, not a 20 -- I said -- I think I said that
18 probably what would be desirable would be around 20 to
19 30 percent, ideally, on the order -- ideally,
20 20 percent, since that would require the least amount of
21 legal review.

22 Q. But, again, these percentages were not
23 communicated to PIF. These were you -- your internal
24 calculations.

25 A. Yes.

1 Q. My question is: Why didn't you do that on
2 August 1?

3 A. Well, I was --

4 MR. NEAL: I think he just asked and
5 answered that, but go ahead.

6 A. Yeah. No, I -- exactly. I did ask and answer
7 you -- I did answer that.

8 Q. (BY MR. PORRITT) So, in your view, you could
9 have issued that tweet on August 1, and that would have
10 been fine?

11 A. Yes.

12 Q. Okay.

13 (Previously marked Exhibit 81 referred to.)

14 MR. PORRITT: Placing before the witness a
15 document previously marked as Exhibit 81, an email from
16 Mr. Musk to the Tesla board of directors dated
17 August 2nd, 2018.

18 A. (Witness reviews document.)

19 Yes.

20 Q. (BY MR. PORRITT) Do you recognize this email?

21 A. Yes.

22 Q. Did you draft this email?

23 A. Yes.

24 Q. Okay. Did anyone assist you in drafting this
25 email?

1 A. No.

2 Q. You didn't consult with any legal advisor?

3 A. I don't recall -- I'm not certain, but I don't
4 recall. I don't -- I don't think I ran this email by
5 anyone.

6 Q. Did you consult with any financial advisor?

7 A. I don't -- I don't think so. I simply draft
8 this email based on what I believed to be the case on
9 August 2nd.

10 Q. All right. Do you recall how long it took you
11 to draft this email?

12 A. No.

13 Q. Did you draft it, let it sit, review it, and
14 then send it, or do you just draft it and send it
15 straightaway, if you remember?

16 MR. NEAL: And what do you mean by that?
17 You mean did he reread it before he sent it?

18 MR. PORRITT: Yes, did he reread it.

19 A. Yeah, I think I probably reread it after
20 drafting it.

21 Q. (BY MR. PORRITT) Did you stop drafting it on
22 August 2nd, 2018?

23 A. I think so.

24 Q. Do you know where you were when you sent this
25 email?

1 A. No.

2 It sounded like the Kennedy assassination.
3 Where were you when Kennedy was assassinated? I wasn't
4 alive.

5 Q. Well, that's next. There is still the Hoffa
6 disappearance that needs to be explored, too.

7 A. Yeah, but I think that's uncertain as to when
8 he disappeared and where he is. Under -- somewhere
9 under the Giants Stadium or something, I think is the
10 speculation.

11 Q. I think that is widely -- I think it is widely
12 speculated but with a reasonable amount of -- a
13 reasonable amount of basis.

14 Do you recall that on August 1 you had
15 the -- well, strike that.

16 Do you know why you sent it to the board on
17 August 2nd, 2018, as opposed to August 1st, 2018, after
18 the meeting with PIF?

19 A. No.

20 Q. Do you recall that Tesla had a conference call,
21 earnings call on August 1st?

22 A. I guess so. I mean, it's obviously very
23 difficult to recall, you know, three -- what exactly
24 happened on which day and which hour in 2018.

25 Q. And you said the 420 per share, I think you've

1 indicated previously, was just a 20 percent premium on
2 the then-market price; is that correct?

3 A. Approximately, yes.

4 Q. And then round it up for 420?

5 A. For karma.

6 Q. Yes. Okay. Was that going to be your final
7 price?

8 A. Karma is real.

9 Q. Was that going to be -- was that your final
10 price for going private?

11 A. No. That's why I said "considering."

12 Q. All right. Were you prepared to go higher than
13 420 per share going private?

14 A. Probably.

15 Q. Okay. Had you even thought about that at the
16 time when you sent this email?

17 A. There was a limit to, you know, how high one
18 could go, so that's why I said "considering at 420."

19 Q. Why was there -- why would there be a limit as
20 to how far you could go?

21 A. Well, there would conceivably be some very high
22 number where it would be difficult to take the company
23 private.

24 Q. But you previously testified that the PIF had
25 committed to funding going private without condition,

1 including price.

2 So how does that work if -- therefore,
3 there couldn't be a limit, could there?

4 A. Well, the funding would be secured provided
5 there was a reasonable premium to the take-private, but
6 not if the stock went to some exorbitant number. The
7 reason I included the number of 420 -- \$420 per share
8 was to make it clear that the funding was secured at
9 that level, but not at some much higher level.

10 That is why I specifically mentioned a
11 20 percent premium over the stock price. Funding was
12 secured at that level, a reasonable premium, to the
13 take-private, but not at some much higher premium.

14 And, if I wanted to really burn the shorts,
15 if that -- if that was my goal, I would not have put a
16 price number in there. I would have left the price
17 open-ended. That would have been the way to actually
18 burn the shorts. That would have been the way to cause
19 them the most amount of harm would be to leave that
20 number open-ended. By putting a number in there that
21 was a 20 percent premium over the short -- over the --
22 the stock price actually reduced the harm to the shorts.

23 Q. And it also had the effect of potentially
24 reducing what you might pay for a going-private
25 transaction; correct?

1 round number and roughly a 20 percent premium to the
2 stock price.

3 Q. And this calculation you did on August 2nd?

4 A. I don't know exactly when that -- it could have
5 been around that time.

6 Q. Well, did you do that before the earnings call
7 on August 1st or not?

8 A. I don't recall exactly when it was.

9 Q. I'll represent to you that the stock price
10 increased significantly after the August 1st earnings
11 call, and that this 20 -- 20 percent premium is
12 calculated on the post-increase.

13 Does that refresh your recollection as to
14 when you -- how you calculated the 420?

15 A. That -- that could be correct.

16 Q. Okay. And I'm correct -- I apologize if I'm
17 repeating myself -- that the 420 price was never
18 mentioned to the PIF on July 31st; correct?

19 A. Just as no price was discussed when they agreed
20 to do -- to take a 5 percent stake in Tesla, no price
21 was discussed at the take-private, nor did they indicate
22 that they had a price limit in any way. They were just
23 unequivocally supportive of a take-private.

24 Q. But I think that was a long way of saying, yes,
25 you did not discuss 420 with the PIF on July 31st, 2018.

1 A. No, but the PIF was well aware that any
2 take-private would involve a reasonable premium. A
3 reasonable premium, in my view, was 20 percent. And
4 they would be well aware that you don't take a company
5 private simply at the price that it is currently
6 trading. There would have to be some premium. They, as
7 experienced investors, were well aware of this.

8 Q. What did you expect to happen after you gave
9 this email -- sent this email to the board on
10 August 2nd, 2018?

11 A. I -- I felt it was important to convey the
12 reasons for taking Tesla private.

13 Q. Convey it to whom?

14 A. To the board.

15 Q. Okay. My question was: What did you expect to
16 happen following the transmission of this email to the
17 board?

18 A. I expected the board to consider the
19 take-private offer.

20 Q. And what would that involve?

21 A. That would involve creating a special committee
22 to consider the take-private.

23 Q. Okay. And what is the purpose of the special
24 committee in this scenario?

25 A. To decide whether or not to put the matter to a

1 not -- did not become too much of a distraction for
2 operation of the company. And so I felt it was like --
3 something like a month to discuss it would probably make
4 sense.

5 Q. Okay. So what did you expect to be resolved,
6 one way or the other, within 30 days?

7 A. Just whether this would be put to a shareholder
8 vote or not.

9 Q. So you -- you expected to have an -- an
10 agreement negotiated with the special committee ready
11 for shareholder vote within 30 days?

12 A. I thought -- yes, I thought that -- something
13 like that would be correct, yeah.

14 Q. Your next paragraph here says you fully support
15 any shareholders who wish to remain shareholders of
16 Tesla as a private company retaining their shares. This
17 offer is just for those who do not wish to remain
18 shareholders of Tesla as a private company.

19 Do you see that?

20 A. Yeah.

21 Q. What structure for private Tesla did you have
22 in mind when you sent this email to the board
23 August 2nd, 2018?

24 A. Sorry. I'm not sure I understood the question.

25 Q. Well, you understand that a private company has

1 a limit on number of shareholders it can have; correct?

2 A. Yes.

3 Q. Okay. And that limit's 300?

4 A. No. I believe that limit is actually 2500.

5 Q. Okay. Well, even at 2500.

6 How many shareholders did Tesla have in --
7 on August 2nd, 2018?

8 A. I don't know.

9 Q. A lot more than 2500?

10 A. Yes.

11 Q. Okay. So how were they going to participate in
12 a private company if the shareholder limit -- number of
13 shareholders was limited to 2500?

14 A. Well, I thought they would be able to
15 participate via a special purpose vehicle where there's
16 one shareholder that owns the shares, but then
17 downstream of that -- let's say one fund that owns the
18 shares, but then a -- a -- a large number of
19 shareholders could be then owners of -- in that fund.

20 This is -- this is also the case at SpaceX
21 where there are funds that invest in SpaceX, but the --
22 those funds have a large number of other investors. So
23 they -- but it only counts as one investor for SpaceX.

24 Q. Have you done any research as to whether this
25 sort of structure was viable for Tesla with a large

1 retail base, investor base?

2 A. Well, I was aware that Fidelity owned -- that a
3 Fidelity fund was an investor in SpaceX, that they only
4 counted as one investor, but there were thousands,
5 perhaps tens of thousands of investors in that Fidelity
6 fund.

7 Q. And is SpaceX the only investment of that
8 Fidelity fund?

9 A. No.

10 Q. Okay. But the special purpose vehicle you're
11 contemplating here would only invest in Tesla; is that
12 correct?

13 A. No, not necessarily.

14 Q. Okay. Had you had any discussions with
15 Fidelity or any other institutional institution about
16 the viability of such a fund or funds?

17 A. No. It was -- I did not feel it was possible
18 to engage in discussions about taking Tesla private
19 without publicly disclosing that this is something I was
20 considering. I thought it was important to disclose
21 publicly that I was considering taking Tesla private at
22 \$420, not at some much higher number.

23 And -- and, in doing so, then I could gauge
24 the interest of shareholders in taking Tesla private and
25 do so without selectively disclosing to some

1 shareholders but not others that Tesla is considering --
2 that I was considering taking Tesla private. I thought
3 it was important that there be -- that all shareholders
4 be on an equal footing in their awareness of the
5 possibility that Tesla would go private. This was the
6 fair and right thing to do.

7 Q. But going back to the August 2nd, 2018, email
8 that you sent to the board, my question is: What basis
9 did you have for stating that you would support any
10 shareholders, remaining shareholders of Tesla as a
11 private company?

12 MR. NEAL: He just answered that.

13 MR. PORRITT: No, he didn't. He argued
14 about how he needed to talk to investors.

15 Q. (BY MR. PORRITT) But had you done any actual
16 research into this?

17 A. As I said, I was aware of a significant case
18 example with Fidelity being an investor in SpaceX as a
19 private company. So it seemed very likely that Fidelity
20 would be willing to invest in Tesla as a private
21 company, whether it was in one fund or another fund, but
22 they -- they -- they clearly did not have a fundamental
23 problem with investing in a private company.

24 Q. All right. That's about Fidelity.

25 But has -- has SpaceX ever had a

1 distributed retail investor base?

2 A. SpaceX does not have a large distributed retail
3 investor base directly; however, there are many funds
4 that are invested in SpaceX that themselves do have a
5 distributed retail investor base, such as the Fidelity
6 fund.

7 Q. Right. But Fidel- -- they're not direct
8 shareholders in SpaceX; correct?

9 A. No. They're indirect shareholders in SpaceX.

10 Q. Okay.

11 A. But this is true also of, you know, Fidelity's
12 funds, publicly traded funds. Fidelity's publicly
13 traded funds are not single stock funds; they're
14 multistock funds, just as there would be privately.

15 Q. So when you say here -- I just want to
16 understand what you mean by this email, Exhibit 81.

17 When you say you support any shareholders
18 who wish to remain shareholders of Tesla as a private
19 company retaining their shares, you mean they would be
20 able to invest in a diversified investment fund that
21 would also include an investment in Tesla; is that
22 correct?

23 MR. NEAL: Object to the form of the
24 question.

25 You can ask him what he means, but I think

1 he's answered that.

2 MR. PORRITT: Well, I'm trying to
3 understand what he means, because what he said doesn't
4 make any sense. So...

5 MR. NEAL: I object to that. Strike that
6 comment.

7 A. Yeah, that's your opinion.

8 Q. (BY MR. PORRITT) Okay. So is that what you
9 meant when you say they could retain their shares? You
10 said they -- so they would not be able to retain their
11 Tesla shares.

12 They would have to swap their Tesla shares
13 for some interest in a fund that would invest in
14 companies other than Tesla; is that correct?

15 A. Yes.

16 Q. Okay. And did you explain that, you know,
17 the -- you met and discussed this proposal with the
18 board on August 3rd.

19 Did you discuss that proposal with the --
20 with the board at that meeting? Do you recall?

21 MR. NEAL: When you say "that proposal,"
22 the -- what do you mean?

23 MR. PORRITT: The proposal that
24 shareholders -- existing shareholders would be able to
25 transfer their shares for an interest in a fund that

1 A. What's that conclusion?

2 Q. That a detailed proposal had not yet been made
3 and would need -- be needed in order for the board to
4 properly analyze and evaluate it.

5 A. Yes.

6 Q. Okay. So you -- you agreed to this -- the
7 email you had sent, Exhibit 81, was not a detailed
8 proposal that the board could properly analyze and
9 evaluate.

10 A. Yes.

11 Q. Okay.

12 MR. NEAL: I think we've been going about
13 an hour and a half.

14 MR. PORRITT: Yeah. I was just going to
15 finish up these minutes and then take a break, if that's
16 okay.

17 MR. NEAL: Okay. Yeah.

18 MR. PORRITT: As you can see, I'm on the
19 last page. So...

20 Q. (BY MR. PORRITT) The minutes then continue
21 (as read) As an initial step, the board authorized
22 Mr. Musk to have initial, conceptual conversations with
23 a few of the company's top shareholders to explore their
24 interest and gauge their reaction to a private corporate
25 structure.

1 Do you see that?

2 A. Yes.

3 Q. Okay. At this board meeting on August 3rd, did
4 you discuss your intent to make a public disclosure of
5 your consideration of a going-private transaction? Did
6 you discuss that with the board?

7 A. Sorry. What was the question?

8 Q. Did you discuss your intent to make a public
9 disclosure of your consideration of a going-private
10 transaction at 420 per share with the board?

11 A. No, I don't think so.

12 Q. Okay. Why not?

13 A. I don't recall.

14 Q. Did you think you would need board approval to
15 make a public disclosure of your consideration of a
16 going-private transaction for Tesla at 420 per share?

17 A. No, because it -- doing so would be in my
18 capacity as an individual, not -- this would not -- the
19 board would be a counterparty in this situation. So I
20 would need to act in my capacity as an individual in
21 proposing the take-private.

22 Q. But you --

23 A. It's not up to the board as to whether I
24 propose to take the company private; it's up to me.

25 Q. But you understood that that proposal may have

1 is described is -- is actually not -- it's slightly
2 inaccurate in that the board really does not have the
3 authority, nor should they have the authority, to
4 constrain the actions of me as an individual proposing
5 to take the company private, because I'm a counterparty.
6 They are not there to authorize or not authorize me.

7 So I think, in this case, the word
8 "authorize" is -- is the wrong word. They -- it's
9 really not up to the board. The -- the important thing
10 here, I think, is that "do not selectively disclose
11 things." And I came to the conclusion that it was
12 really impossible to have conversations with some
13 investors but not others without creating a selective
14 disclosure problem.

15 Q. Did you try to have a conversation with an
16 investor between August 3rd and August 7th?

17 A. I don't recall.

18 Q. All right. Well, yeah, that was -- why don't
19 we take a break and then come back.

20 THE VIDEOGRAPHER: The time is 3:27. We
21 are off the record.

22 (A recess was taken from 3:27 p.m.
23 to 4:08 p.m.)

24 THE VIDEOGRAPHER: The time is 4:08. We
25 are on the record.

1 Q. Okay. I'm going to represent to you that
2 August 3rd was a Friday.

3 So, over the weekend, do you recall
4 discussing the potential going-private transaction with
5 anyone? This will be August 4th, August 5th, 2018.

6 A. I don't recall.

7 Q. Okay. At some point over the weekend, did you
8 have a telephone conversation with Michael Dell?

9 A. I may have had -- yes, actually, I -- I think I
10 did.

11 Q. Okay. And I think that was on the weekend.

12 Do you recall anything about that
13 conversation?

14 A. Yes. I -- I asked him, did -- was he glad to
15 have done the -- to have taken Dell Computer private,
16 did he -- did he think that that was a good idea, and
17 had that allowed him to operate the company more
18 effectively. And he said he -- he did. He said it was
19 a very difficult process, but it was one that he did not
20 regret doing.

21 Q. When he said it was a very difficult process,
22 did he give any further detail as to what the process
23 entailed for him in taking Dell private?

24 A. Just that there were -- there were significant
25 legal challenges that he had to face from lawyers like

1 yourself, and that I think he had to spend a fair bit of
2 time in Delaware. So -- and I think -- I think, in that
3 case, the -- the judge -- the initial judgment actually
4 was against him in the take-private transaction but was
5 subsequently overturned on appeal.

6 Q. Did he give an indication of the amount of time
7 the transaction took?

8 A. I think he said maybe a year or something. I'm
9 not sure of the exact -- it's also -- it's like --
10 I'm -- I don't -- I don't -- I don't recall there being
11 a specific time frame, but I think -- yeah. So I -- you
12 know, when I say, like, do I actually remember it or do
13 I think I remember it, I think I remember him saying
14 something like a year, but I'm not sure.

15 Q. Okay. Did you talk -- did he talk to you about
16 the disclosure of -- when you disclose the potential
17 going-private transaction?

18 A. No. I just want -- I just wanted to see if
19 he -- if he thought it was a good idea to take his
20 company private. And he -- he thought -- despite the
21 difficulty, he thought that it was -- nonetheless had
22 been worth doing.

23 Q. And Dell was a conventional
24 going-private; correct? Michael Dell took majority
25 control of the company?

1 A. In that case, it was Michael Dell taking
2 majority control of the company, not exclusive control,
3 but majority control. But he received financial
4 support, I believe, from Silver Lake and some others.
5 And so he may be beholden to them in some way. I don't
6 know.

7 Q. Did Michael Dell discuss with you the
8 importance of the timing of when you disclose the price
9 of which you propose to take a company private?

10 A. No.

11 Q. Did you also talk to -- and before your
12 counsel leaps all over me, I'm just -- at this point,
13 I'm just talking about whether a conversation took place
14 and the topic.

15 Did you also talk to a lawyer from Wachtell
16 over the course of the weekend?

17 MR. NEAL: Just yes or no on that, if you
18 remember.

19 A. It's difficult to remember the exact timing of
20 conversations three years ago and, you know, exactly
21 what day they occurred and when they occurred. I think
22 I talked to a lawyer from Wachtell. Yeah, I'm not
23 certain.

24 Q. (BY MR. PORRITT) Okay. Fair enough.

25 And then, on the Monday, you had a

1 provision at this point, but yeah.

2 A. I think he's probably aware of it.

3 Q. After you sent this tweet -- well, no. Let's
4 just finish off. Sorry.

5 The reference here to "funding secured,"
6 that refers to the Saudi Arabia PIF; is that correct?

7 A. Yes.

8 Q. Okay. And I don't want to rehash our
9 discussion at length.

10 And that was based on your discussion you'd
11 had with the PIF on your July 31st, 2018,
12 meeting; correct?

13 A. Correct.

14 Q. You had not had any subsequent communications
15 with the PIF?

16 A. I don't think so.

17 Q. Okay. After you sent this tweet, do you know
18 what happened next? Can you -- do you remember what
19 happened next?

20 MR. NEAL: Well, in -- in what respect?

21 Q. (BY MR. PORRITT) Well, immediately thereafter,
22 you know, between -- there is a --

23 MR. NEAL: Like he said, he got on the
24 airplane and flew it.

25 Q. (BY MR. PORRITT) Did anyone call you? I guess

1 Q. Okay. Although, just to go back to Exhibit 8,
2 it doesn't say "funding secured at 420"; right?

3 MR. NEAL: It speaks for itself. You don't
4 need -- he's arguing with you now. You don't need to
5 argue with him.

6 A. Yeah.

7 Q. (BY MR. PORRITT) Well, was funding secured if
8 the price was 421?

9 A. Probably.

10 Q. Okay. What about 425?

11 A. I mean, some number that would -- that would
12 not be some much larger premium of the stock price, but
13 I want it -- you know, I want it to be clear that it was
14 not -- I would not consider taking Tesla private at any
15 price, but I'm considering taking Tesla private at \$420.

16 Q. And did, in fact, Sarah O'Brien, Todd Maron,
17 and you -- and Mr. Ahuja, rather, draft a blog post or
18 email for you?

19 A. Yeah, we worked on a blog post.

20 Q. Okay. And how did you -- how was that work
21 undertaken?

22 A. We aerated on -- on a blog post and -- and
23 posted one.

24 Q. Okay. So -- but how -- how was the work --
25 who -- who -- who drafted the preliminary draft?

1 A. I don't recall.

2 Q. Was it you?

3 A. No. I think they sent me a draft.

4 Q. Okay. Do you remember if you made any comments
5 to it?

6 A. I don't recall.

7 Q. Okay. Do you recall how it was sent to you?

8 A. Probably by email.

9 Q. Okay. Were Ms. O'Brien, Mr. Maron, and
10 Mr. Ahuja also at Fremont on this day, on this morning?

11 A. I think so, but I'm not certain.

12 Q. All right.

13 MR. PORRITT: Why don't we get the -- so
14 let's mark this as the next -- what are we up to?
15 Sorry.

16 THE REPORTER: 331.

17 MR. PORRITT: 331.

18 (Exhibit 331 marked.)

19 MR. PORRITT: So I'm placing before the
20 witness a document marked as Exhibit 331, a document
21 Bates-stamped TESLA_LITTLETON_00020197. I think it was
22 a native file, so I think it just has one -- oh, sorry.
23 Okay.

24 A. (Witness reviews document.)

25 Q. (BY MR. PORRITT) I'll represent to you these

1 this -- this email? What I'm describing as an email was
2 titled "The following email was sent to Tesla employees
3 today."

4 A. Yes.

5 Q. Okay. This was an email you sent on
6 August 7th, 2018?

7 A. Yes.

8 Q. Okay. Again, reading this, does it refresh
9 your recollection about any particular part of this that
10 you drafted or wrote?

11 A. This actually does look like the sort of -- the
12 way that I would write things.

13 Q. Okay. But you don't have any recollection of
14 writing any of it?

15 A. I mean, I don't have any specific recollection
16 except that this certainly reads like an email that is
17 in my voice.

18 Q. Okay. First of all, this email doesn't mention
19 funding; correct?

20 A. It does not seem to mention funding.

21 Q. Okay. Do you know -- do you know why funding
22 wasn't included in this email?

23 A. No.

24 Q. Do you recall asking or suggesting that funding
25 be discussed in this email?

1 THE VIDEOGRAPHER: The time is 5:33. We
2 are on the record.

3 Q. (BY MR. PORRITT) So before the break,
4 Mr. Musk, I just -- we were looking at Exhibit 12, the
5 email dated August 7th, 2018. I just have a couple of
6 follow-up questions.

7 So, in this -- in this email, you refer to
8 shareholders, and you also refer to investors.

9 Is there any difference between the two in
10 this email?

11 A. Well, shareholders would be those that are
12 currently shareholders. Investors could be either
13 current, prospective -- current shareholders,
14 prospective shareholders, or both.

15 Q. Okay. And when you're using it -- so, for
16 instance, I see it in the second-to-last paragraph here.
17 Where -- you write, in Exhibit 12, (as read) ...where
18 there is as little change to all of our investors,
19 including all of our employees, as possible.

20 Do you see that?

21 A. Yeah.

22 Q. All right. Who -- what -- in what use are you
23 using it there?

24 A. Investors would be shareholders, yeah, current
25 shareholders.

1 transaction by August 7th, 2018?

2 A. I don't recall.

3 Q. The second sentence is -- well, the second
4 sentence says "Only reason why this is not certain is
5 that it's contingent on a shareholder vote."

6 Do you see that?

7 A. Yes.

8 Q. Okay. Now, we'd already seen in the August 3rd
9 board meeting that there currently was not a proposal, a
10 formal proposal for the board to evaluate and analyze.

11 Do you recall that?

12 A. Yes.

13 Q. And you had testified that there would need to
14 be a special committee appointed who would negotiate the
15 terms of the final transaction; correct?

16 A. They would -- they would negotiate what would
17 be proposed to shareholders.

18 Q. Okay. And that hadn't been -- that process
19 hadn't been even started by this point; correct?

20 A. I'm not certain.

21 Q. Okay. Was there a special committee appointed
22 by August 7th, 2018?

23 A. I'm not sure.

24 Q. So what was -- there was nothing in existence
25 on August 7th, 2018, for the shareholders to vote

1 And then you conclude that particular point
2 was (as read) Although the majority of shareholders I
3 spoke to said they would remain with Tesla if we went
4 private, the sentiment, in a nutshell, was "please don't
5 do this."

6 Do you see that?

7 A. Yes.

8 Q. Okay.

9 A. But I think this confirms what my tweet says,
10 that the -- they are supportive but would prefer not to
11 do it.

12 Q. All right. So that's how -- that's how you
13 interpret the "investor support is confirmed"?

14 A. Yeah. I mean, they -- I mean, I'm -- I'm
15 basically -- I think I'm being quite consistent here in
16 saying that -- you know, that they, you know, have -- I
17 have investor support to go -- to go private, not that
18 it couldn't be done, but there is a preference that it
19 not be done.

20 Q. Okay. And how would you confirm this investor
21 support by August 7th, 2018?

22 A. Well, the Saudi investment fund was -- said
23 that they would provide -- they would support going --
24 going private.

25 Q. Right. Had you confirmed it with any other

1 investor?

2 A. No, but -- I don't -- I don't recall exactly.

3 But just simply between myself and the Saudi investment
4 fund, we could obviously get a majority vote. And so
5 that would be investor support.

6 Q. Well, how would the Saudis get -- how would
7 the Sau- -- how would you and the Saudis get a majority
8 vote?

9 A. Well, I owned -- I owned 20 to 25 percent of
10 the shares that would vote, and if they had a similar
11 amount and, you know, investors that I was confident
12 would be supportive, we could easily just get to
13 50 percent. This is a simple --

14 Q. But that's not confirmed, though, is it?

15 A. No, I think it was confirmed. In fact, I -- I
16 was clear in earlier testimony that I was confident
17 about the Saudi investment support.

18 Q. Right. But --

19 A. They would be an investor.

20 Q. Right. That's one investor, but the -- the
21 50 percent isn't confirmed, though; correct?

22 A. The 50 percent we could get to with simply my
23 shares and if they went -- if they, let's say for
24 argument's sake, went to 30 percent, which I mentioned,
25 then we would have the majority.

1 Q. Right. But you expressly did not want to care
2 for Saudi. You told the board you did not want the
3 Saudi investment fund to go up to 30 percent.

4 A. No. I said that 20 to 30 percent was most
5 likely preferable. Not that they would have 50 percent,
6 but that, combined, my shares and theirs would get to
7 50 percent, and that would give a majority vote.

8 Q. You hadn't mentioned 20 to 30 percent to the
9 Saudi prevention invention [sic] fund. I mean, I know
10 we're somewhat going over old ground, but -- sorry it's
11 come up again.

12 Just to confirm, you hadn't confirmed any
13 percents -- specific percentage with the Saudi
14 pension -- Public Investment Fund, had you?

15 A. They were clear that they would provide
16 whatever support was needed to go private. The minimum
17 threshold for going private would be a combined vote of
18 50 percent. That would require them to get to 25 or
19 30 percent ownership from 5 percent, which combined with
20 my 20 to 25 percent would get majority vote.

21 Q. What would --

22 A. That's investor support.

23 Q. And what --

24 A. A lot of investor support.

25 Q. What would happen if -- as of August 7th, 2018,

1 if the Saudi Public Investment Fund did not give you the
2 funding to purchase over 51 percent?

3 A. Well, the -- in talking with Silver Lake,
4 Goldman Sachs, and Morgan Stanley, they were confident
5 that the funding could be raised whether or not the
6 Saudi investment fund wanted to proceed.

7 Q. If it had -- well, two things: What would
8 happen with the -- what would happen with the funding
9 from the Saudi pension investment -- Public Investment
10 Fund?

11 MR. NEAL: Can I hear that question again.
12 (Record read.)

13 MR. NEAL: Object to the form. I don't
14 understand that question.

15 Q. (BY MR. PORRITT) If the Saudi Public
16 Investment Fund refused to provide the funding that you
17 discussed on July 31st, 2018, what would -- what would
18 you have -- what recourse could you take?

19 A. Well, I think I would work with Silver Lake,
20 Goldman Sachs, and Morgan Stanley, all of whom agreed to
21 support the take-private and raise money from other
22 investors.

23 Q. Had they -- had you spoken to them by
24 August 7th, 2018?

25 A. I'm not sure exactly -- no, no. In this -- in

1 this case, the August 7th one, I'm referring to the
2 Saudis.

3 Q. Okay. But --

4 A. And the August 24th one, I specifically mention
5 Silver Lake, Goldman Sachs, and Morgan Stanley
6 explicitly.

7 Q. So -- but the August 7th --

8 A. But you're conflating the two, but there is a
9 big difference in time here.

10 Q. Understood.

11 So we can put -- in the August 7th, you
12 write "Investor support is confirmed," referring to the
13 Saudi Public Investment Fund; correct?

14 A. Yes.

15 Q. Okay. My question is: If the Saudi Public
16 Investment Fund did not provide you with the funding,
17 what was your recourse going to be?

18 MR. NEAL: What do you mean? Recourse
19 against PIF? He just answered that question.

20 Q. (BY MR. PORRITT) Yes. What would your
21 recourse be against PIF?

22 MR. NEAL: If any.

23 Q. (BY MR. PORRITT) Well, that's the question.

24 A. Well, on August 7th, I believe that the -- we
25 had their full support. Subsequent to that, whether or

1 not they -- there was support -- whether or not they
2 wanted to increase their investment beyond 5 percent was
3 not necessary to take the company private. I --
4 Silver Lake, Goldman Sachs, and Morgan Stanley were
5 highly confident that we could raise the money to take
6 Tesla private whether or not the Saudis participated.

7 Q. But you -- once again, you're not answering my
8 question, which is that: Did you have any legal
9 recourse against the PIF if they refused to provide you
10 funding for a going-private transaction?

11 A. No, I don't think so.

12 Q. Okay. Did you have any -- did you ever obtain
13 a contractual commitment letter for any funding for the
14 going-private transaction at any time?

15 MR. NEAL: A letter?

16 MR. PORRITT: Just a contractual
17 commitment.

18 MR. NEAL: Well, I object to the form of
19 that question. What do you mean by "contractual
20 commitment"?

21 MR. PORRITT: Okay. An enforceable
22 commitment.

23 MR. NEAL: It call -- that calls for a
24 legal speculation on his part.

25 MR. PORRITT: Well, as he understands it.

1 view?

2 A. I -- I think, yes, in this -- in this context,
3 it is a synonym for -- yeah.

4 Q. Okay. You think there is a thesaurus in the
5 world that lists secured as a -- as a synonym for
6 confident?

7 MR. NEAL: This is getting silly.

8 A. I suspect there probably is.

9 Q. (BY MR. PORRITT) Okay. Well...

10 A. I'm confident there is.

11 Q. Why don't we go to -- back to Exhibit 121, your
12 text messages. And if I can refer you to --

13 MR. NEAL: That thick --

14 A. Oh.

15 Q. (BY MR. PORRITT) Yeah, it's just -- there you
16 are. I think that's it. And then if you can go forward
17 to -- let's see. It's the one, two, three, four, five,
18 six, seven -- eighth page of Exhibit 121 on
19 August 10th, 2018. The time stamp on here is 22:45.
20 Actually, if you just go up to --

21 A. Sorry. Where?

22 Q. Yeah. It's 8/10/2018, 19:56. Sorry.

23 A. Yes.

24 Q. Okay. Do you see a text there from you to
25 Yasir?

1 A. Yes.

2 Q. All right. Saying "This is a major problem.
3 It's extremely important that you confirm that you are
4 in discussions with me regarding the take-private
5 transaction."

6 A. Yes.

7 Q. "Nothing more needs to be said."
8 Do you see that?

9 A. Yes.

10 Q. Okay. Do you recall sending that text to
11 Yasir?

12 A. Yes.

13 Q. Okay. What prompted you to send that text?

14 A. I think there was some press or statement
15 about -- from the -- the Saudi PIF that they were less
16 committed to the -- to supporting a take-private then,
17 was my understanding.

18 Q. In your text, you don't ask Yasir to confirm
19 that they have committed to funding or that they've --
20 you have secured funding.

21 A. Well, I'm certainly asking that they confirm
22 discussions. That's -- they don't need to say more than
23 that, even though I felt that they had committed to more
24 than that.

25 Q. Well, why didn't you ask them to say more than

1 that?

2 A. I was trying to make the least difficult ask of
3 them.

4 Q. Okay. Was it because you knew that they
5 wouldn't confirm that they had committed funding?

6 A. No.

7 Q. Later down on that page, there is a lengthy
8 text from Yasir. If you could just read that.

9 A. "Elon, as you know, PIF purchased a passive
10 stake" --

11 Q. You can read it to yourself. I don't --

12 A. Okay. Great.

13 Q. Don't read it out loud. Sorry.

14 A. Okay.

15 Q. If you could just read it to yourself. I'm
16 sorry. I didn't want to read it out -- I was going to
17 read it out loud and thought that's a bit of a long
18 read. So I'll let you read it to yourself.

19 A. (Witness reads document.)

20 Yes.

21 Q. Okay. Yasir describes his understanding as
22 "PIF remains interested" as -- well, sorry. First of
23 all, he describes his -- his -- his status as owning a
24 passive stake in Tesla.

25 A. Yes.

1 Q. Do you see that?

2 And then it "remains interested in
3 potential investment opportunities."

4 Do you see that?

5 A. Yes.

6 Q. And that they would explore investing in Tesla.
7 Correct?

8 A. Yes.

9 Q. Okay. There is no reference in there to a
10 commitment to funding; correct?

11 A. I mean, they -- they -- they say very clearly
12 that they're interested in investment opportunities.

13 Q. It says --

14 A. I mean, they're -- they're explicit about --
15 they're very clear that they are interested in
16 investment opportunities with Tesla.

17 Q. Right. Contingent upon Tesla creating a
18 production hub in the Kingdom of Saudi Arabia; correct?

19 A. Yes, that's what the text says.

20 Q. Okay.

21 A. Which I was not opposed to. It's just a
22 question of the timing.

23 Q. Okay. But does this -- this suggests that any
24 significant investment by Public Investment Fund was
25 contingent upon Tesla opening a production facility in

1 the -- in the Kingdom of Saudi Arabia?

2 A. At some point in the future, which I was not
3 opposed to. I thought that would be quite reasonable.
4 In fact, I thought it could be helpful to Saudi Arabia
5 to have a -- something that employed people that was
6 with -- that -- for sustainable energy. I was
7 sympathetic to their need to transition away from a
8 dependency on oil.

9 Q. Do you know -- is opening a production facility
10 in Saudi Arabia something you would need board approval
11 before you could do?

12 A. Not -- I don't think so.

13 Q. Okay. So you can open up a production facility
14 anywhere in the world without board approval?

15 A. Yeah. Perhaps if it was beyond a certain
16 scale, there might need to be board approval. But
17 generally, the board is -- does not operate the company;
18 I operate the company.

19 Q. Yasir's text then says, "We would like our
20 teams to start working together in a confidential manner
21 to explore a potential transaction."

22 Do you see that?

23 A. Yes.

24 Q. Okay. Is that consistent with committing
25 financing for a going-private transaction?

1 A. I mean, he's clearly saying that he wants to
2 pursue investment opportunities.

3 Q. Okay.

4 A. So that's -- that's consistent with investment
5 support.

6 Q. Okay. Is it consistent with -- starting to
7 work together, is that consistent with securing funding?

8 A. I mean, they're very clear about being
9 interested in investment opportunities. They state that
10 explicitly.

11 Q. Okay. But --

12 A. They wouldn't have said that if they weren't
13 interested in investment opportunities.

14 Q. Right.

15 A. So they're interested in investment
16 opportunities.

17 Q. Okay.

18 A. They wanted to invest.

19 Q. Okay. Is that the same as committing to
20 invest?

21 A. I mean, they're -- they're very clear about
22 wanting to invest. Why would we not take them at their
23 word?

24 Q. Did you have a conversation with Yasir on
25 August 10th, 2018? That's a Friday, point of reference.

1 Q. So if you can just turn down after the --
2 immediately after the "It's over" text. There is
3 another lengthy text from Yasir. He says (as read)
4 Let's see the numbers and get our people to meet and
5 discuss. We cannot approve something when we don't --
6 that we don't have sufficient information on. We've
7 agreed that you will send the financial information and
8 the way going forward within a week and nothing happened
9 since. The last thing I want to do is "through you
10 under the bus." So please don't treat me like an enemy.
11 You forgot there was a change of position
12 from July 31st, 2018?

13 A. My concern was with what they were saying
14 publicly or what was getting leaked publicly. It
15 certainly would be fine to provide them with additional
16 information, but I felt it was important that they
17 correct any public misperception that they were not
18 interested in investing when, in fact, they were
19 interested in investing.

20 They needed to correct in the public
21 perception, because they were interested in investing,
22 and they would not -- Yasir would not be wanting to meet
23 with me and talk with me and be pushing me for
24 information if he wasn't interested in investing. So,
25 obviously, he is privately interested in investing. He

1 simply needs to confirm that publicly.

2 Q. Well, wasn't it also true that following
3 July 31st, 2018, they needed to get additional
4 information before they could approve any funding for
5 Tesla?

6 MR. NEAL: Is it true, or is that what that
7 tweet says? That's what the tweet says.

8 Q. (BY MR. PORRITT) Well, I'm asking: Isn't it
9 true?

10 A. I mean, he's saying that he wants additional
11 information, which is completely fine. It is normal to
12 get additional information, just like when you make an
13 offer on a house and you want to buy a house, you
14 look -- you want additional information.

15 Your intent, however, is to follow through
16 with the investment. That, I don't have a problem with.
17 I do have a problem with not being clear publicly that
18 the PIF was interested in increasing their investment,
19 which they were.

20 Q. So --

21 A. They would not be pushing me for conversations
22 and meetings and documents if they were not interested
23 in investing, if they did not want to invest. They're
24 very clear about wanting to invest privately. I just
25 wanted them to make that consistent publicly.

1 Q. The statement here, "We cannot approve
2 something that we don't have sufficient information on,"
3 that was the understanding, comment of July 31st, 2018?

4 A. No, that was not the understanding of
5 July 31st.

6 Q. Is this statement consistent with secured
7 funding from PIF?

8 A. The -- the very clear understanding that I had
9 on July 31st was that they would support a take-private.

10 Q. Is the statement "PIF cannot approve something
11 that we don't have sufficient information on" consistent
12 with securing funding from them?

13 A. I think the -- the July 31st -- the tweet is
14 based off of what I said on July 31st. On July 31st --
15 or the tweet -- the tweet is based on the meeting that
16 we had on July 31st. In that meeting, they were -- they
17 were unequivocal in their support for taking Tesla
18 private. Yeah.

19 Q. That didn't really answer my question.

20 Is someone not approving something when
21 they don't have sufficient information on consistent
22 with securing funding for that person?

23 MR. NEAL: Object to the form of the
24 question. It's argumentative, unclear.

25 A. The tweet is based on the conversation we had

1 on July 31st. In that conversation, they -- they --
2 they were unequivocally supportive of Tesla -- of taking
3 Tesla private. That's what that tweet was based on.
4 And, on that basis, I felt funding was secured.

5 Q. (BY MR. PORRITT) So looking down here, just
6 two more -- two or three texts down, you have more from
7 Yasir, saying (as read) Details on how we can take the
8 company private. That's what we agreed on. What is the
9 required percentage and so on? What are required
10 regulatory thresholds for taking it private?

11 Do you see that?

12 A. Yes, that's -- those are entirely reasonable
13 questions.

14 Q. Okay. That -- you agreed to provide that
15 information to Yasir at the July 31st, 2018, meeting?

16 A. I mean, it's reasonable, in -- in taking a
17 company private, to say, okay, what percentage of the --
18 the company does Saudi PIF have to provide? That is a
19 reasonable question. It could be 15 percent,
20 20 percent, 25 percent. But there was no equivocation
21 in the July 31st meeting regarding their support for
22 taking Tesla private, none.

23 Q. But they would need to have that additional
24 information before they could commit funding?

25 A. I think you're just trying to be tricky here.

1 Q. I'm just asking a question.

2 MR. NEAL: What's the question?

3 MR. PORRITT: Could you read the question
4 back, please.

5 (The record was read as

6 follows:

7 "Q. But they would need to

8 have that additional

9 information before they could

10 commit funding?")

11 A. Yes, but that is not saying that they are not

12 willing to commit funding. They're simply -- it's,

13 like, quite reasonable for them to ask, okay, so do you

14 want us to invest 20 percent? 25 percent? That's in no

15 way undermining their desire to invest.

16 Q. (BY MR. PORRITT) Okay.

17 A. It's typically like saying, well, how big --

18 you know, should we write a check for 20 percent or

19 25 percent or what? It's not saying they won't write

20 the check.

21 Q. If you could -- let's go on to the next page.

22 And please read the texts in between -- yes, the texts

23 in between for additional context. But I want to focus,

24 again, on --

25 MR. NEAL: What exhibit are you working off

1 of?

2 MR. PORRITT: 121.

3 MR. NEAL: Okay. Yep.

4 MR. PORRITT: Still 121.

5 MR. NEAL: Yeah. You got the right page?

6 MR. PORRITT: Has the witness got the right
7 page? I don't want to point him to another.

8 MR. NEAL: Yeah, this is
9 Exhibit 121; right?

10 MR. PORRITT: Okay.

11 MR. NEAL: Yeah.

12 Q. (BY MR. PORRITT) This is now a text dated
13 August 12th, 2018, time stamped 18:57. Yasir writes
14 (as read) We haven't taken any company private yet in
15 the US or anywhere else, and the agreement, as was
16 minuted by my people, is to wait for the information to
17 be sent by you within a week on how we will move forward
18 together.

19 Do you see that?

20 A. No, I'm sorry. I must be on the wrong page.

21 Q. Oh, I apologize. It's August 12th, 18 -- that
22 was at 18:57. And, as your counsel pointed out, read
23 any intervening texts that you want to obtain whatever
24 context you want.

25 A. Yes, I don't think this -- this -- this is

1 consistent with them saying that -- I mean, he's saying
2 he wants to move forward together.

3 Q. Okay.

4 A. That's -- like, clearly, he's saying he wants
5 to move forward together.

6 Q. Okay. After obtaining additional information.

7 A. Yes.

8 Q. Okay.

9 A. He wants to move forward together. That's
10 obviously expressing strong interest in literally moving
11 forward together.

12 Q. Okay. So this is -- this statement here in
13 this text we're just looking at is consistent with
14 saying funding is secured from PIF?

15 A. This is not the same as the conversation that
16 we had on July 31st. July 31st, it was "we will support
17 you in going private." That was it. And, on that
18 basis, I felt funding was secured. You -- you can't,
19 like, look at something on -- that's, like, 12 days
20 later, 13 days later, and say that somehow I would have
21 had foreknowledge of something 12 days later.

22 Q. This is referring to the minutes made of -- by
23 PIF at the meeting on July 31st; correct?

24 A. I mean, he's saying that there were minutes,
25 but I don't recall any minutes being made of that

1 July 31st, my understanding was that the Saudi
2 investment fund was unequivocally supportive of taking
3 Tesla private. And that's why I said funding's secured.
4 I had, in my opinion, very sound basis for doing so.

5 (Previously marked Exhibit 16 referred to.)

6 Q. (BY MR. PORRITT) Why don't we just have a look
7 at what's been previously marked as Exhibit 16.

8 A. (Witness reviews document.)

9 Yeah, exactly. Yeah, I think this is a
10 very accurate statement. Yeah, I mean, this is -- this
11 is exactly what happened.

12 MR. NEAL: And, just for the record, when
13 you say "this," you're referring to Exhibit 16?

14 A. Yeah, this -- exactly. This -- Exhibit 16 is
15 exactly what happened. When I say why did I -- why I
16 responded why did I say funding secured is because that
17 was exactly what I thought was the case from the
18 July 31st meeting with PIF.

19 Q. (BY MR. PORRITT) So referring to that -- in
20 Exhibit 16 on the second page, third paragraph down, you
21 write (as read) Following the August 7th announcement,
22 I've continued to communicate with the managing director
23 of the Saudi fund. He has expressed support for
24 proceeding subject to financial and other due diligence
25 and their internal review process for obtaining

1 approvals. He has also asked for additional details on
2 how the company would be taken private, including any
3 required percentages and any regulatory requirements.

4 Do you see that?

5 A. Yes.

6 Q. First of all, is that consistent with funding
7 being secured from the PIF as of August 7th, 2018?

8 A. This is not as strong as the statement
9 that -- as the conversation on July 31st, and that's why
10 I'm clarifying that August 7th -- following the
11 August 7th announcement, the -- they made additional
12 requests. These requests were not there on July 31st,
13 which is why I said "funding secured."

14 Q. Do you mention in here about accusations you
15 made to the Saudi fund that they were throwing you under
16 the bus, and that you were going to exclude them from
17 the transaction?

18 A. Actually, the -- I didn't say -- I said -- I
19 didn't think they would necessarily be excluded from the
20 conversation. If they did not clarify their public
21 position, I would not -- I said I would not be -- feel
22 comfortable proceeding.

23 Q. Had you signed a no -- nondisclosure agreement
24 with the PIF at this point?

25 A. I don't recall.

1 Q. Okay. Do you recall at one point in time
2 executing a nondisclosure agreement with the PIF?

3 A. I don't recall.

4 Q. Okay. If the tweets that we looked at on
5 August 7th had disclosed the pertinent information about
6 going private, why would you need to sign a
7 nondisclosure agreement with the PIF?

8 A. I don't know.

9 Q. If we can go back to Exhibit 121, your text
10 messages, onto the subsequent page, where we were
11 before. So this is now stamped August 13th, 2018,
12 19:17. Do you see there is a text from
13 Yasir to -- Yasir to you?

14 A. Yes.

15 Q. Okay. Yasir writes (as read) Elon, I'm
16 personally surprised. You've signed an NDA, and while
17 we are waiting for you and your team to provide us with
18 information to move forward, you post an ill-advised
19 blog with loose information. Anyway, we hope that you
20 and your team work on gathering the information as soon
21 as possible and send that to us to move forward, Yasir.
22 Do you see that?

23 A. Yes. I mean, he's saying, once again, that he
24 wants to move forward with the transaction. I mean,
25 this is good.

1 Q. Do you agree that the blog --

2 A. He's reaffirming his interest in investing.

3 Q. Do you agree with Yasir, that the blog was
4 ill-advised with loose information?

5 A. No.

6 Q. Do you know what Yasir's referring to there?

7 A. No.

8 Q. You respond "You shouldn't be. I'm still
9 upset."

10 Do you see that?

11 A. Yes.

12 Q. Okay. What were you upset about with Yasir?

13 A. I was upset that the -- the -- what the press
14 was reporting was not consistent with our private
15 discussions. In the private -- he, once again,
16 reaffirms via text that he's interested in moving
17 forward as soon as possible. He says that in the text.
18 I simply want that to be reflected in the media. I
19 simply want that to be the same. That is entirely
20 reasonable.

21 Q. We leapt ahead a little bit, but going back
22 following your August 7th tweets that we were looking
23 at, Exhibits 8 through 13, I believe they are.

24 Do you recall what the market reaction was
25 to your tweets?

1 A. Okay.

2 Q. I apologize. That was a little trick.

3 A. Last page just has a signature on it.

4 Q. Okay. First page.

5 A. (Witness reviews document.)

6 Q. So it's really the section titled "1,
7 Discussion of a Potential Going-Private Transaction."

8 A. Yeah, okay. I'll read that.

9 Q. Thank you.

10 A. (Witness reads document.)

11 Yes, I've read it.

12 Q. Okay. So if I can direct you back to the first
13 page of Exhibit 101.

14 A. Yes.

15 Q. The -- the last paragraph, the carry-over
16 paragraph, starting on page 1 of Exhibit 101, where you
17 say -- or the minutes say (as read) Mr. Musk next
18 discussed with the board information that he had learned
19 in recent weeks following his announcement, including,
20 but not limited to, the negative views of many of the
21 company's current stockholders regarding the prospect of
22 the company going private, the difficulties the
23 company's current stockholders would have in continuing
24 to own Tesla's stock if the company went private, as
25 well as the procedural difficulties of any going-private

1 transaction, including the extended length of time such
2 a transaction would require, and how it may distract and
3 negatively impact the company's focus on its core
4 business.

5 Do you see that?

6 A. Yes.

7 Q. Does that accurately summarize your discussion
8 with the board on August 23rd, 2018?

9 A. I think it does, yeah.

10 Q. If I -- on to the next page of Exhibit 101,
11 just after the --

12 MR. NEAL: And when you say "the next
13 page," you mean page 2 or --

14 MR. PORRITT: Page 2. Sorry.

15 MR. NEAL: Page 2.

16 MR. PORRITT: Page 2. Sorry.

17 Q. (BY MR. PORRITT) Midway through, or about a
18 quarter of the way through that paragraph, after the
19 redactions, the minutes say (as read) As part of this
20 discussion -- or no. Sorry. Well, yeah. (As read) As
21 part of this discussion, Mr. Musk reminded the board
22 that one of his preferences when considering a
23 going-private transaction was to allow Tesla's long-term
24 investors to continue to keep their equity positions in
25 Tesla, but he had recently heard from numerous investors

1 off responding to these inquiries?

2 A. Well, I thought it would be best to schedule
3 calls with investors and talk to them about the
4 take-private. Yeah.

5 Q. And did you -- did you actually schedule those
6 calls?

7 A. Yeah, we sched- -- I sched- -- we scheduled
8 calls with a number of the major investors. I think
9 most of the major investors I talked to at some point in
10 the following weeks. And that's where, you know, I
11 asked them what their interest would be in remaining as
12 an investor in Tesla as a private company, whether they
13 thought this was a good idea, whether they'd be
14 supportive of that.

15 And, yeah, I -- on balance, about, you
16 know, roughly half of the investors were
17 supportive of -- or they -- they would continue to
18 remain investors as Tesla -- with Tesla as a private
19 company, but most preferred that we would remain public.
20 But that did not -- so they -- they would be willing to
21 be a private investor -- they were willing to -- would
22 be willing to be part of Tesla as a private company, but
23 they would prefer that we remain public.

24 Q. Okay. I think, with that, I don't have any
25 further questions.

NAME OF CASE: In re Tesla, Inc. Securities Litigation

DATE OF DEPOSITION: November 5, 2021

NAME OF WITNESS: Elon Musk

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page 17 Line 23-24 Reason 3

From voting on -- voting on to verging on -- verging on

Page 130 Line 7 Reason 3

From draft to drafted

Page 154 Line 20 Reason 3

From the end by to Dubai

Page 164 Line 12 Reason 3

From consummate to [inaudible]

Page 188 Line 5 Reason 3

From would start to was not

Page 196 Line 22 Reason 3

From aerated to iterated

Page 244 Line 20 Reason 3

From correct in the to correct the

Page _____ Line _____ Reason _____

From _____ to _____



1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 IN RE TESLA, INC. SECURITIES) Case No.
LITIGATION) 3:18-cv-04865-EMC
5)
6)
7)
8)
_____)

9 REPORTER'S CERTIFICATION
10 ORAL AND VIDEOTAPED DEPOSITION OF
11 ELON MUSK
12 NOVEMBER 5, 2021
13

14 I, CANDICE ANDINO, Certified Shorthand Reporter in
15 and for the State of Texas, hereby certify to the
16 following:

17 That the witness, ELON MUSK, was duly sworn by the
18 officer and that the transcript of the oral deposition
19 is a true record of the testimony given by the witness;

20 I further certify that pursuant to FRCP Rule
21 30(f)(1) that the signature of the deponent:

22 _____ was requested by the deponent or a party
23 before the completion of the deposition and returned
24 within 30 days from date of receipt of the transcript.

25 If returned, the attached Changes and Signature Page

1 contains changes and the reasons therefor;

2 __X__ was not requested by the deponent or a party
3 before the completion of the deposition.

4 I further certify that I am neither attorney nor
5 counsel for, related to, nor employed by any of the
6 parties to the action in which this testimony was taken.

7 Further, I am not a relative or employee of any
8 attorney of record in this cause, nor do I have a
9 financial interest in the action.

10 Subscribed and sworn to on this 10th day of
11 November, 2021.

12 

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